IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9551 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

BABUBHAI NANJIBHAI SOLANKI

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Appearance:

1. Special Civil Application No. 9551 of 2001

MR RV DESAI, AGP for Petitioners No. 1-2

MR TR MISHRA for Respondent No. 1

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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 02/11/2001

ORAL JUDGEMENT

#. Rule. Mr.Mishra waives service of rule for the respondent. With the consent of the parties, the matter is taken up for final hearing today.

#. The respondent has raised the industrial dispute which was referred to the Labour Court, Bhavnagar. The said reference was numbered as Reference (LCB) No.474 of 1989. By the impugned award, the reference of the respondent workman was partly allowed and he was ordered to be reinstated in service without back-wages. The said award is impugned at the instance of the petitioner in this petition.

#. Mr.Desai, learned AGP stated that the award of the Labour Court is ex parte as nobody appeared in the said proceedings on behalf of the State Government. He further submitted that at the relevant time, the concerned employee has not completed 240 days, and, therefore, provisions of section 25-F are not applicable. He further submitted that the Irrigation Department is not an industry, and, therefore, the reference was not competent.

#. Against the aforesaid argument, it was argued by Mr.Mishra for the respondent that even though the matter was pending since 1989 i.e. for more than 10 years, no steps were taken by the State Government to attend the said proceedings. He submitted that the concerned employee is without employment since considerable time. He further submitted that, even if one more opportunity is given to the State Government by remanding the matter back, the respondent workman should be adequately compensated by way of appropriate cost as the reference is of 1989.

#. Considering the arguments of both the sides, I am of the opinion that, there is total negligence on the part of the concerned officer of the State Government who was in-charge of the matter before the Labour Court. Before the Labour Court, the matters are delayed and in the instant case the reference is of 1989 and was decided in 2000. In spite of the aforesaid long period, the State Government has not chosen to appear or defend the said reference. However, in order to see that the case of the State Government may not suffer, I set aside ex parte award on condition that the petitioner - State Government will pay the costs of Rs.10,000/- (Rupees Ten Thousand Only) to the respondent workman. Such costs to be deposited in the Labour Court, Bhavnagar within a period of six weeks from today and on deposit of the said amount, the Labour Court will permit the concerned workman to withdraw the said amount without imposing any condition. It is clarified that, in case, the State Government fails to deposit the said amount as quantified

above, the impugned award of the Labour Court will stand. The Labour Court before taking the aforesaid matter for hearing, shall ensure that the aforesaid payment of costs is made by the State Government. This matter is remanded back only on condition that the State Government will pay Rs.10,000/- by way of costs to the respondent workman. Mr.Desai requested that the amount of costs may be reduced. However, looking to the facts and circumstances of the case and considering the fact that the matter was pending since 1989 and the officer of the State Government who was in-charge of the matter before the Labour Court was totally negligent, the State Government must pay the aforesaid costs to the respondent workman as the respondent workman has to suffer for no fault on his part. It will be open for the petitioner thereafter to initiate proceedings for the purpose of recovering the amount of costs from the officer who was negligent in not attending the aforesaid case properly and because of the said negligence, the State Government is put to loss of Rs.10,000/-. The Labour Court will decide the aforesaid reference again after hearing both the sides on its own merits and will dispose of the said pending reference latest by 30.4.2002.

#. In view of what is stated above, the petition is allowed. The impugned award of the Labour Court is quashed and set aside. The matter is remanded back to the Labour Court and the reference is restored on the file of the Labour Court. Rule is made absolute accordingly with costs as indicated above.

(P.B.Majmudar,J)
(pathan)